* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CRL.REV.P. 688-689/2005

Reserved on : July 9, 2007
Date of decision : July 26, 2007

MANGI LAL AGARWAL & ANR. ..... Petitioners
Through Petitioner in person

versus

STATE OF NCT OF DELHI ..... Respondent
Through: Mr. O.P. Saxena, Advocate

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat:

1. In this revision, under Section 397, Code of Criminal Procedure (hereafter "the Code") the petitioners (complainant/ informants, referred to as such hereafter) question an order of the metropolitan magistrate, accepting the cancellation report filed by the police.

2. Briefly, the facts necessary to decide this petition are that the complainants executed two separate sale deeds to convey first floor of property being no. E-126,

Lajpat Nagar-I. They alleged however that possession was not handed over. The complainants alleged that the vendee/accused, respondents in these proceedings kept Rs. 10 lakhs as loan on the understanding that they (the complainants) would be paid the amounts after the possession was given to them. The complainants alleged that the premises were to be vacated by them, after completion of construction of their alternative house, in Jaunapur Village. They further alleged that according to the understanding, the possession was to be retained by them till the end of February, 2001. However, on 13th February, 2001, nine persons (seven men and two women) trespassed into their house, and tried to talk about obtaining possession. At that time, the first petitioner was not present; soon, he joined the second petitioner. He called the police. After investigation, a cancellation report was filed. After hearing parties, including the complainants, who had protested the report, the trial court accepted the final report, and closed the case.

3. The trial court, in its order, recorded that the two sale deeds were executed on 19-12-2000 and 29-1-2001, as also two possession letters on the same dates. The first letter recited that possession would be handed over after repayment of Rs. 10 lakh by the purchaser, on 29-1-2001. The second letter mentioned that possession was handed over on the date of its issue, i.e 29-1-2001. The Investigating officer reported that there were sufficient materials indicating that the possession was handed over actually on that date; the sale was complete. He also reported that the complainant had permitted the purchasers to keep their

goods, in the premises, in a bedroom with a toilet. The purchaser/accused also commenced some renovation work; however, the complainants were permitted to continue in the premises for a few days on humanitarian grounds, since their house at Mehrauli had not been completed. The police recommended closure of the case. The complainants protested; they led evidence. They deposed that the entire consideration for the property had not been paid by the accused; consequently there was an understanding that the possession would not be handed over to them till the balance of Rs. 10 lakhs was paid. It was also stated that the workers of the accused were permitted to carry out repairs; at that stage the complainants were not aware of the fraudulent intention of the accused/ respondents, to cheat them. Apparently, the purchasers/ accused also filed a counter complaint, which led to FIR No. 335/2002. In that case, the police recommended closure, after investigation. The closure report was accepted; no cognizance was taken by the court.

4. The trial court, after noticing the materials, concluded that the elements of the offence of house trespass were absent, in view of the two sale deeds and the possession letters admittedly executed by the complainants. These evidenced that possession was handed over. The court also noticed that there was a dispute about payment of Rs. 10 lakhs; another factor considered was that the complainant had filed a civil suit for possession; she was given possession as per terms and conditions of the sale deed on 10-8-2003. A possession letter, signed by one complainant (M.L. Agarwal) as well as the accused (Manish Gupta) as

confirming parties, was relied upon. The court concluded that the evidence indicated that symbolic possession of the property was handed over to the accused; it inferred that they had no intention to commit the offence of criminal trespass. The court relied upon the decision reported as *Giri Bala Sahu -vs- Proba Misra* 1974 Crl LJ 1972.

5. The complainant, Shri Mangi Lal Agarwal argued that the police, during the investigation, seemingly, overlooked the fact that the complainants were in "actual physical possession" of the premises. This could be easily verified from neighbors, flower and newspaper delivery persons, and by records of the landline telephones connected, in the premises, showing the calls made by the complainants. It was urged that the entry into, and presence of the accused at the premises, without the permission of the complainants was easily verifiable from the records of various complaints made to the Police number and the Vigilance Department of the Police. It was submitted that the complainants had complained to secure the eviction of the trespassers. The accused trespassed three times during a span of five days, and each time had to be evicted by the Police. The complainants had provided details of all these complaints to the Investigating Office ("I/O) who did nothing.

6. It was urged that the I/O, failed to investigate, collect evidence and bring the evidence on records in order to prove or disprove the above-mentioned two ingredients. He instead chose to file the cancellation report. The petitioner submitted that he had expressed concern about dishonesty of the I.O. Enough

credible evidence was collected to establish these.

7. It was submitted that the circumstances which persuaded the court to accept the final report were not material; the court should have probed deeper as there were sufficient materials to reject the report and take cognizance of the offence.

8. Section 441 of the Indian Penal Code, defines criminal trespass, as an act whereby a person enters upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property etc. It is clear, therefore, that trespass is committed by the intention on the part of the trespasser to commit an offence or to intimidate, insult or annoy etc. When the trespasser has that blameworthy mind in effecting the entry into the property in possession of some others, he is said to have committed the offence of criminal trespass. In this case, the admitted circumstances are that the complainant received substantial amounts; according to them some dispute existed about the remaining amount to be paid by the accused. It is also an undisputed fact that the accused were permitted to carry out some repairs in the premises; the complainants allege, however, that they were in exclusive possession. The trial court considered the materials, particularly the two possession letters. Although it did not premise its conclusions, on those, the court was satisfied that the symbolic possession of the property was given to the accused. On these facts, the court held that the basic ingredient of criminal trespass, i.e intention to insult, intimidate or annoy any one in possession of

property was not discernable.

9. After considering the submissions and averments and also examining the materials, I find no reasons to upset the order of the court below. The question as to whether the complainant was in possession at the time, when the nine persons went to the premises, is a matter of inference, to be gathered from the statement of parties, documents and surrounding circumstances. The court, after considering the letters, deeds and the fact that substantial amounts had been admittedly paid to the complainant, concluded that the accused could not be considered strangers; symbolic possession was with them. This was on the basis of the amount paid to the complainant as well as other facts such as the admitted presence of the accused's employees in the premises. I do not find the order or approach of the court below to be irregular or contrary to law; it has also not unjustifiably accepted the cancellation report submitted by the police.

10. The revision has to fail, for the reasons disclosed above. The petition is accordingly dismissed; in the circumstances, however, without costs.

S. RAVINDRA BHAT,J

JULY 26, 2007